AdvanceMe Inc v. RapidPay LLC Doc. 234 Att. 8

EXHIBIT G

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IN THE UNITED STATES DISTRICT COURT JOHNSON
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

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ADVANCEME, INC.,

Plaintiff,

- against -

Case No.
6:05-CV-424
(LED-JDL)

RAPIDPAY LLC, FIRST FUNDS LLC,
MERCHANT MONEY TREE, INC.,
REACH FINANCIAL LLC, and FAST
TRANSACT, INC., d/b/a SIMPLE
CASH,

Defendants.

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VIDEOTAPED DEPOSITION OF JOHN RANDALL BOURNE

Stamford, Connecticut

January 26, 2007

Atkinson-Baker, Inc.
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File No. A00B0E0
Reported by:
KATHERINE D. NICHOLS, RPR

JOHN RANDALL BOURNE

A Well, as president, broadly, everything. I focused more on the merchandising end of the business and the creative advertising, if you will, end of the business and the catalog development and the store development. Those were my primary focuses, though I had to be aware of everything that went on.

Q Were you involved in consulting with other employees or making decisions yourself about what type of contracts to enter into?

MS. WILLIAMS: Objection.

A If there was any contract entered into from a company, I was involved. And so I was -- I consulted with employees on all their agreements with our vendors.

Q Earlier -- this is just to clarify. I am going to sort of go back through the declaration that we were talking about earlier, which --

MR. GRAY: Let me introduce this as a separate exhibit to keep this straight.

(Bourne Exhibit 5 - DECLARATION OF JOHN RANDALL BOURNE - was marked

JOHN RANDALL BOURNE

for identification this date) 11:51:24

Q And as we walk through this, if there's anything that's incorrect, please mark it on what's been marked as Exhibit 5. 11:51:24 11:51:26 11:51:30

A Okay. 11:51:33

Q So, for example, earlier you testified that in Paragraph 3, you were the president of Exposures from '86 to 2002, not 2003. 11:51:34 11:51:36 11:51:39 11:51:43

A 2002, correct. 11:51:44

Q And in Paragraph 5, earlier you testified that it's your understanding that Litle & Company, National Processing Company, and First National Bank of Louisville together processed Exposures' card transactions between -- 11:51:46 11:51:49 11:51:51 11:51:56 11:52:00 11:52:03

A That's correct. 11:52:05

Q Between 1988 or '89 you said -- 11:52:07

A That Litle, yes. In fact -- right, I believe we had a credit card processor at Exposures first, and then Litle became the credit card processor in approximately in 1988, '89. That's what I said to you on the telephone, I think yesterday. 11:52:13 11:52:16 11:52:19 11:52:22 11:52:29 11:52:42

JOHN RANDALL BOURNE

Q Will you please correct that day as well in Paragraph 5. 11:52:43 11:52:47

A Well, if I cannot -- so what date would you like me to put in there? 11:52:48 11:52:50

MS. WILLIAMS: Objection. The accurate one. 11:52:52 11:52:55

A Well, the accurate one. And I said I couldn't recall, but it's approximately 1988. 11:52:56 11:52:59

Q That's perfect. 11:53:05

A From approximately -- I'm doing this in pencil. 11:53:06 11:53:07

Q That's fine. Maybe just state into the record what you've changed. 11:53:09 11:53:11

A Okay. I have just changed that Litle & Company, National Processing Company, and First National Bank of Louisville together were Exposures' payment processors from approximately 1988 to '91. 11:53:12 11:53:14 11:53:18 11:53:21 11:53:25

Q Okay. Is it your understanding that these three entities, Litle & Company, National Processing Company, and First National Bank of Louisville were parties to the member agreement along with Exposures? 11:53:27 11:53:28 11:53:32 11:53:42 11:53:44

A Yes. 11:53:44

JOHN RANDALL BOURNE

Q In Bourne Exhibit 5, will you please review this carefully with the changes you've made as we walked through it here today, which I believe were two dates; is that correct? 12:16:30 12:16:34 12:16:39 12:16:41

A That's correct. 12:16:43

Q And as you review that, will you please verify that it's true and accurate, and if so, sign and date at the end of declaration. 12:16:45 12:16:47 12:17:53

A (Reviewing document) 12:18:00

THE VIDEOGRAPHER: We need to change the tape in one minute. 12:18:02 12:18:05

MR. GRAY: We can off the record. 12:18:07

THE VIDEOGRAPHER: This will conclude videotape number two of this deposition. We are off the record at 12:17 p.m, January 26th, 2007. 12:18:09 12:18:11 12:20:04 12:22:05

(Break taken) 12:22:10

THE VIDEOGRAPHER: This is the beginning of videotape number three of this deposition. We are on the record at 12:21 p.m. January 26th, 2007. 12:22:10 12:22:12 12:22:15 12:22:16

MR. GRAY: For the record, we went off the record to change videotapes, and while we were off the record, the witness 12:22:19 12:22:22 12:22:26

JOHN RANDALL BOURNE

reviewed the declaration. And if you could please read back the question that was pending when we went off the record a few second ago -- a few minutes ago, I should say. 12:22:28 12:23:22 12:23:31 12:23:38 12:23:39

(Question read by the reporter) 12:23:39

A I will. 12:23:40

Q I believe the year is 2006, which needs to be changed to 2007. 12:23:42 12:23:45

A Would you like me to initial these changes? 12:23:54 12:23:55

Q Yes, please. 12:23:55

A (Witness complies) 12:23:57

Q You can just leave it there. The court reporter will take it. 12:24:01 12:24:04

A Okay. 12:24:05

Q And then one last question. On Schedule E-1, which is Exhibit 2 and LI-00004, do you recognize Allen Abbott's signature at the bottom? 12:24:05 12:24:09 12:24:13 12:24:16

A Yes, I do. 12:24:17

Q And is it your belief that this agreement was entered into in June of 1990? 12:24:18 12:24:19

A Yes. 12:24:23

JOHN RANDALL BOURNE

CERTIFICATE

STATE OF NEW YORK)
: ss
COUNTY OF WESTCHESTER)

I, KATHERINE D. NICHOLS, RPR, a Shorthand Reporter and Notary Public within and for the State of Connecticut, do hereby certify:

That JOHN RANDALL BOURNE, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of February, 2007.

Katherine D. Nichols RPR

KATHERINE D. NICHOLS, RPR

Signature Requested